PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants	Gary S. Foster, *et al.*
Application No. 09/930,920	Filing Date: August 16, 2001
Title of Application:	Prorating Of Contract Notes In System For Facilitating Trade Processing And Trade Management
Confirmation No. 2564	Art Unit: 3693
Examiner	Dass, Harish T

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Appeal Brief Under 37 CFR §41.37

Dear Sir:

A Notice of Appeal from the final rejection of Claims 1-26, all pending claims of U.S. Patent Application No. 09/930,920, being filed herewith, Appellant accordingly files its Appeal Brief in connection with its appeal. A Claims Appendix is submitted herewith, as are Appendices related to evidence previously submitted and decisions related to the case.

(i) Real Party In Interest

The real party in interest is Omgeo LLC, assignee of the present patent application.

(ii) Related Appeals and Interferences

Appellant filed an appeal to the Board of Patent Appeals and Interferences, on April 18, 2007, in U.S. Patent Application No. 09/504,803. The application being appealed herein is a continuation-in-part of U.S. Patent Application No. 09/504,803. In response to the appeal being filed, the Examiner reopened prosecution.

Appellant filed an appeal to the Board of Patent Appeals and Interferences, on January 25, 2006, in U.S. Patent Application No. 09/930,918. U.S. Patent Application No. 09/930,918 and the application being appealed herein are both continuations-in-part of U.S. Patent Application No. 09/504,803 (mentioned above). In response to the appeal being filed, the Examiner reopened prosecution, and U.S. Patent No. 7,143,060 ultimately issued.

Appellant filed a first appeal to the Board of Patent Appeals and Interferences on August 3, 2004, a second appeal to the Board of Patent Appeals and Interferences on January 30, 2006, and a third appeal to the Board of Patent Appeals and Interferences on May 26, 2006, in U.S. Patent Application No. 09/931,123. U.S. Patent Application

No. 09/931,123 and the application being appealed herein are both continuations-in-part of U.S. Patent Application No. 09/504,803 (mentioned above). In response to the first and second appeals being filed, the Examiner reopened prosecution, and the third appeal is currently pending.

(iii) Status Of Claims

Claims 1-26, all pending claims of the present application, stand rejected and are the subject of the instant Appeal. A copy of each of these claims is attached hereto in the Claims Appendix.

(iv) Status Of Amendments

There are no pending or unentered Amendments. Appellant has not filed any Amendments after the mailing of the Final Office Action mailed July 27, 2007.

(v) Summary Of Claimed Subject Matter

Claims 1, 9, 14 and 22 are the rejected independent claims and are discussed below.

Independent Claim 1

Claim 1 is directed to a system 10 for facilitating processing and management of a securities trade which includes a computer 26. *See, e.g.,* Spec. ¶¶ 0024, 0025 and

Fig. 1. Trade execution information 28, 42 supplied by a first trading party 12 is received by the computer 26, which trade execution information 28, 42 is indicative of an executed securities trade by the first trading party 12, and trade allocation information 30, 44 supplied by a second trading party 18 is received by the computer 26, which trade allocation information 30, 44 is indicative of an ordered securities trade by the second trading party 18. *See, e.g.,* Spec. ¶¶ 0024, 0025, 0027 and Figs. 1, 2, 3. A set of predefined acceptable trade parameters, specified by at least one of the first trading party 12 and the second trading party 18, are provided, and software executing on the computer 26 compares the trade execution information 28, 42 with the trade allocation information 30, 44, and determines that a match exists if the trade execution information 28, 42 and the trade allocation information 30, 44 correlate within the set of predefined acceptable trade parameters. *See, e.g.,* Spec. ¶¶ 0026, 0027, 0030 and Figs. 1, 3.

Software executing on the computer 26, if a match is determined to exist between the trade execution information 28, 42 and the trade allocation information 30, 44, matches contract level details indicative of the executed trade by the first trading party 12 with allocation level details indicative of the ordered trade by the second trading party 18, and creates contract notes based upon the matched contract level details and allocation level details. *See, e.g.,* Spec. ¶¶ 0031-0035 and Figs. 1, 3.

Independent Claim 9

Claim 9 is directed to a system 10 for facilitating processing and management of a securities trade which includes a computer 26. *See, e.g.,* Spec. ¶¶ 0024, 0025 and Fig. 1. Trade execution information 28, 42 supplied by a first trading party 12 is received by the computer 26, which trade execution information 28, 42 is indicative of an executed securities trade by the first trading party 12, and trade allocation information 30, 44 supplied by a second trading party 18 is received by the computer 26, which trade allocation information 30, 44 is indicative of an ordered securities trade by the second trading party 18. *See, e.g.,* Spec. ¶¶ 0024, 0025, 0027 and Figs. 1, 2, 3. A set of predefined acceptable trade parameters, specified by at least one of the first trading party 12 and the second trading party 18, are provided, and software executing on the computer 26 compares the trade execution information 28, 42 with the trade allocation information 30, 44, and determines that a match exists if the trade execution information 28, 42 and the trade allocation information 30, 44 correlate within the set of predefined acceptable trade parameters. *See, e.g.,* Spec. ¶¶ 0026, 0027, 0030 and Figs. 1, 3.

Software executing on the computer 26, if a match is determined to exist between the trade execution information 28, 42 and the trade allocation information 30,

44, matches contract level details indicative of the executed trade by the first trading party 12 with allocation level details indicative of the ordered trade by the second trading party 18, and creates contract notes based upon the matched contract level details and allocation level details. *See, e.g.,* Spec. ¶¶ 0031-0035 and Figs. 1, 3. The allocation level details comprise a part of the trade allocation information, and if the contract level details do not comprise a part of the trade execution information, the contract level details are prorated based upon the allocation level details. *See, e.g.,* Spec. ¶¶ 0031-0035 and Figs. 1, 3.

Independent Claim 14

Claim 14 is directed to a method for facilitating processing and management of a securities trade. *See, e.g.,* Spec. ¶¶ 0024, 0025 and Fig. 1. Trade execution information 28, 42 indicative of an executed securities trade by a first trading party 12 and trade allocation information 30, 44 indicative of an ordered securities trade by a second trading party 18 are received. *See, e.g.,* Spec. ¶¶ 0024, 0025, 0027 and Figs. 1, 2, 3. The trade execution information 28, 42 is compared with the trade allocation information 30, 44, and a match is determined to exist if the trade execution information 28, 42 and the trade allocation information 30, 44 correlate within a set of predefined acceptable trade parameters specified by at least one of the first trading party 12 and the second trading party 18. *See, e.g.,* Spec. ¶¶ 0026, 0027, 0030 and Figs. 1, 3.

If a match is determined to exist between the trade execution information 28, 42 and the trade allocation information 30, 44, contract level details indicative of the executed trade by the first trading party 12 are matched with allocation level details indicative of the ordered trade by the second trading party 18, and contract notes are created based upon the matched contract level details and allocation level details. *See, e.g.,* Spec. ¶¶ 0031-0035 and Figs. 1, 3.

Independent Claim 22

Claim 22 is directed to a method for facilitating processing and management of a securities trade. *See, e.g.,* Spec. ¶¶ 0024, 0025 and Fig. 1. Trade execution information 28, 42 indicative of an executed securities trade by a first trading party 12 and trade allocation information 30, 44 indicative of an ordered securities trade by a second trading party 18 are received. *See, e.g.,* Spec. ¶¶ 0024, 0025, 0027 and Figs. 1, 2, 3. The trade execution information 28, 42 is compared with the trade allocation information 30, 44, and a match is determined to exist if the trade execution information 28, 42 and the trade allocation information 30, 44 correlate within a set of predefined acceptable trade parameters specified by at least one of the first trading party 12 and the second trading party 18. *See, e.g.,* Spec. ¶¶ 0026, 0027, 0030 and Figs. 1, 3.

Allocation level details are extracted from the trade allocation information 30, 44, and contract level details are extracted from the trade execution information 28, 42 if the contract level details comprise a part of the trade execution information 28, 42; if the contract level details do not comprise a part of the trade execution information 28, 42, the contract level details are prorated based upon the allocation level details. *See, e.g.,* Spec. ¶¶ 0031-0035 and Figs. 1, 3. Contract level details indicative of the executed trade by the first trading party 12 are matched with allocation level details indicative of the ordered trade by the second trading party 18, and contract notes are created based upon the matched contract level details and allocation level details. *See, e.g.,* Spec. ¶¶ 0031-0035 and Figs. 1, 3.

(vi) Grounds Of Rejection To Be Reviewed On Appeal

Claims 1-7, 9-12, 14-20 and 22-25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kawashima et al. (US 2002/0188560) in view of Hitachi (JP 2001147956A) and Wilton et al. (US 2006/0053074).

Claims 8, 13, 21 and 26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kawashima et al., Hitachi and Wilton et al., and further in view of May (U.S. Patent No. 6,317,727).

(vii) Argument

The present invention, as claimed, is generally directed to a system and method for facilitating the processing and settlement of an already executed securities trade, which system and method compares trade execution information supplied by one trading party with trade allocation information supplied by a second trading party and determines that a match exists if the trade execution information and the trade allocation information correlate within a set of predefined acceptable trade parameters specified by at least one of the parties. Appellant respectfully submits that none of the cited prior art references, either alone or in combination, disclose, teach or suggest the claimed invention.

Rejection of Claims 1-7, 9-12, 14-20 and 22-25

As mentioned above, the present invention is directed to a system for facilitating the processing and settlement of an already executed securities trade.
The system includes a computer which receives trade execution information indicative of an executed trade by a first trading party and trade allocation information indicative of an ordered trade by a second trading party. Executing on the computer is a matching program for comparing the trade execution information with the trade allocation information and for determining that a match exists if the trade execution information

and the trade allocation information correlate within acceptable trade parameters specified by at least one of the trading parties.

In this regard, all independent claims (i.e., Claims 1, 9, 14 and 22) specifically require that the trade execution information be indicative of an executed securities trade by a first trading party, and that the trade allocation information be indicative of an ordered securities trade by a second trading party. Appellant respectfully submits that these elements, which would clearly be understood by one skilled in the art as being terms of art relating to an already executed securities trade, are not disclosed, taught or suggested by any of Kawashima et al., Hitachi or Wilton et al., or by any combination thereof.

Kawashima et al. relates generally to a system and method for settling accounts among a plurality of participants, and more particularly to a method for settling accounts among a plurality of participants by multilaterally or bilaterally setting off sums payable by each participant to others with sums receivable by each participant from others. Thus, Kawashima et al. has nothing whatsoever to do with securities trades, and certainly does not even hint at trade execution information indicative of an executed securities trade supplied by a first trading party, and/or trade allocation information indicative of an ordered securities trade supplied by a second trading party (i.e., an already executed securities trade). The only mention of a "security" whatsoever made

in Kawashima et al. relates to a monetary security (i.e., a surety) provided to cover debts in case a party becomes insolvent. (see, for example, Paragraph [0066] of Kawashima et al.). Appellant respectfully submits that one skilled in the art certainly would not understand this mention of a monetary security (i.e., surety) as meaning that Kawashima et al. discloses a system for settling already executed securities trades, that Kawashima et al. discloses trade execution information indicative of an executed securities trade supplied by a first trading party, and/or that Kawashima et al. discloses trade allocation information indicative of an ordered securities trade supplied by a second trading party, which elements are required by all appealed claims.

Similarly, Hitachi relates to an agreement registration process, wherein transaction contract modification accompanied by an increase in net exposure is prohibited to a user when net exposure exceeds credit limit. Thus, like Kawashima et al., Hitachi has nothing whatsoever to do with securities trades, and certainly does not even hint at trade execution information indicative of an executed securities trade supplied by a first trading party, and/or trade allocation information indicative of an ordered securities trade supplied by a second trading party.

Furthermore, Wilton et al. also has nothing whatsoever to do with a system for facilitating the processing and settlement of an already executed securities trade. While Wilton et al. does relate to arbitrage in various markets, and may therefore arguably be

related to securities trading, Wilton et al. is concerned with helping buyers and sellers find each other and facilitating execution once they do find one another. However, this all takes place *before* the present invention would be employed, since the present invention, as claimed, is directed to the processing and settlement of an already executed securities trade. Thus, Appellant respectfully submits that Wilton et al. does not in any way discloses trade execution information indicative of an executed securities trade supplied by a first trading party, and/or trade allocation information indicative of an ordered securities trade supplied by a second trading party, which elements are required by all appealed claims.

Further, as mentioned above, the present invention, as claimed, includes a matching program for comparing the trade execution information with the trade allocation information and for determining that a match exists if the trade execution information and the trade allocation information correlate within acceptable trade parameters. The acceptable trade parameters may be supplied by the first trading party and/or the second trading party such that significant flexibility in matching criteria is achievable. This important aspect of the present invention is discussed in detail in the Specification as originally filed, for example, in Paragraphs [0027] and [0028]. Moreover, it should be noted that all claims highlight this aspect of the invention by requiring that the set of predefined acceptable trade parameters be specified by at least

one of the first trading party and the second trading party. Appellant respectfully submits that these elements are not disclosed, taught or suggested by any of Kawashima et al., Hitachi, or Wilton et al., or by any combination thereof.

While Appellant notes that Kawashima et al. discloses counterchecking by comparing two sets of payment information with one another, Kawashima et al. is merely concerned with determining whether the two sets of payment information are identical. (see Paragraph [0093] which states: "The netting service provider 14 decrypts with the common key K the read sets of confirmed payment information 18, and performs counterchecking 19 to see if the payment information contained therein is identical with the matching payment information 12 stored in its own memory"). Thus, Kawashima et al. does not disclose, teach or suggest in any way comparing trade execution information with trade allocation information, and determining that a match exists if the trade execution information and the trade allocation information correlate within a set of predefined acceptable trade parameters specified by at least one of the first trading party and the second trading party, as is required by all claims. Consequently, Kawashima et al. provides no flexibility whatsoever for the parties to vary acceptable matching criteria as they see fit.

Moreover, Appellant can see nothing in Hitachi that would lead one skilled in the art to these highlighted limitations.

Similarly, Appellant respectfully submits that there is nothing in Wilton et al. that would lead one skilled in the art to these highlighted limitations. The Examiner points to certain portions of Wilton et al. which teaches that a party may supply limitations on a potential counterparty's allowable level of risk (i.e., credit line) so as to limit the party's exposure by preventing potential trades between itself and the potential counterparty. Clearly, this is completely different than allowing a user to specify tolerances for determining whether a match exists between trade execution information indicative of an executed securities trade supplied by a first trading party and trade allocation information indicative of an ordered securities trade supplied by a second trading party.

Thus, the user-supplied credit line information of Wilton et al. is used to prevent trades from being executed in the first place, while the claimed acceptable trade parameters, in a completely different fashion, are used as part of trying to determine if a match exists between two pieces of information relating to an already executed trade. Moreover, even if the user-supplied credit line taught by Wilton et al. was incorporated into the system of Kawashima et al., the result would be that the credit line would be one of the elements of payment information counterchecked by the system. The system, however, would still require that each of the elements contained within the two sets of payment information be identical for a match to be found (i.e., there would still be no comparison to see whether two sets of data correlate within a set of predefined acceptable trade parameters specified by at least one of the first trading party and the second trading party.).

Furthermore, Appellant respectfully submits that a system having the above-discussed limitations would not have been obvious to one having ordinary skill in the art in view of the cited references. All three of Kawashima et al., Hitachi and Wilton et al. disclose systems and methods that are concerned with solving completely different problems than is the present invention, and as such, there is no suggestion whatsoever to make the modifications necessary to arrive at the claimed invention. One skilled in the art considering the cited prior art, without the benefit of the present application in front of himself/herself, would simply not be taught to arrive at the present invention, as claimed.

Rejection of Claims 8, 13, 21 and 26

These claims each ultimately depend from one of independent Claims 1, 9, 14 or 22, and therefore Appellant respectfully submits that Claims 8, 13, 21 and 26 are patentable over Kawashima et al., Hitachi and Wilton et al. for the reasons discussed above. Moreover, Appellant respectfully submits that May discloses, teaches or suggests nothing whatsoever that would lead one skilled in the art to make the modifications to Kawashima et al., Hitachi and Wilton et al. necessary to arrive at the claimed invention. Indeed, May is cited only for allegedly teaching the allowance of trading parties to access, modify and confirm trading party profiles.

Conclusion

For the foregoing reasons, Appellant respectfully submits that the claimed invention embodied in each of claims 1-26 is patentable over the cited prior art. The cited prior art is directed to solving completely different problems in completely different ways than is the present invention, as claimed, and as such does not disclose, teach or suggest numerous claimed limitations, either when taken alone or when taken in combination. As such, Appellant respectfully requests that the rejections of each of claims 1-26 be reversed and the Examiner be directed to issue a Notice of Allowance allowing each of these claims.

Respectfully submitted,

November 16, 2007

/Wesley W. Whitmyer, Jr./

Wesley W. Whitmyer, Jr., Registration No. 33,558
Todd M. Oberdick, Registration No. 44,268
Attorneys for Appellant
ST.ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905-5619
203 324-6155

Attorneys for Appellant

Claims Appendix
to Appeal Brief Under 37 CFR §41.37
Serial No. 09/930,920

1. A system for facilitating processing and management of a securities trade comprising:

a computer;

trade execution information received by said computer, said trade execution information indicative of an executed securities trade by a first trading party;

trade allocation information received by said computer, said trade allocation information indicative of an ordered securities trade by a second trading party;

a set of predefined acceptable trade parameters specified by at least one of the first trading party and the second trading party;

software executing on said computer for comparing said trade execution information with said trade allocation information, and for determining that a match exists if said trade execution information and said trade allocation information correlate within said set of predefined acceptable trade parameters; and

software executing on said computer for, if a match is determined to exist between said trade execution information and said trade allocation information, matching contract level details indicative of the executed trade by the first trading party with allocation level details indicative of the ordered trade by the second trading party,

and creating contract notes based upon the matched contract level details and allocation level details.

2. The system of Claim 1 wherein the allocation level details comprise a part of the trade allocation information.

3. The system of Claim 1 wherein the contract level details comprise a part of the trade execution information.

4. The system of Claim 1 wherein the contract level details are prorated based upon the allocation level details.

5. The system of Claim 4 wherein at least a portion of the contract level details are prorated proportionally.

6. The system of Claim 4 wherein at least a portion of the contract level details are prorated on an equal basis.

7. The system of Claim 4 further comprising a database of trading party profiles accessible by said computer, said database of trading party profiles having stored thereon a trading party profile for the first trading party which comprises an indication of

proration rules, and wherein the contract level details are prorated either proportionally or on an equal basis depending upon the proration rules.

8. The system of Claim 7 further comprising software executing on said computer for allowing the first trading party to access, modify and confirm the trading party profile.

9. A system for facilitating processing and management of a securities trade comprising:

a computer;

trade execution information received by said computer, said trade execution information indicative of an executed securities trade by a first trading party;

trade allocation information received by said computer, said trade allocation information indicative of an ordered securities trade by a second trading party;

a set of predefined acceptable trade parameters specified by at least one of the first trading party and the second trading party;

software executing on said computer for comparing said trade execution information with said trade allocation information, and for determining that a match exists if said trade execution information and said trade allocation information correlate within said set of predefined acceptable trade parameters;

software executing on said computer for, if a match is determined to exist between said trade execution information and said trade allocation information,

matching contract level details indicative of the executed trade by the first trading party with allocation level details indicative of the ordered trade by the second trading party, and creating contract notes based upon the matched contract level details and allocation level details; and

wherein the allocation level details comprise a part of the trade allocation information, and wherein if the contract level details do not comprise a part of the trade execution information, the contract level details are prorated based upon the allocation level details.

10. The system of Claim 9 wherein at least a portion of the contract level details are prorated proportionally.

11. The system of Claim 9 wherein at least a portion of the contract level details are prorated on an equal basis.

12. The system of Claim 9 further comprising a database of trading party profiles accessible by said computer, said database of trading party profiles having stored thereon a trading party profile for the first trading party which comprises an indication of proration rules, and wherein the contract level details are prorated either proportionally or on an equal basis depending upon the proration rules.

13. The system of Claim 12 further comprising software executing on said computer for allowing the first trading party to access, modify and confirm the trading party profile.

14. A method for facilitating processing and management of a securities trade comprising the steps of:

receiving trade execution information, the trade execution information indicative of an executed securities trade by a first trading party;

receiving trade allocation information, the trade allocation information indicative of an ordered securities trade by a second trading party;

comparing the trade execution information with the trade allocation information, and determining that a match exists if the trade execution information and the trade allocation information correlate within a set of predefined acceptable trade parameters specified by at least one of the first trading party and the second trading party;

matching, if a match is determined to exist between the trade execution information with the trade allocation information, contract level details indicative of the executed trade by the first trading party with allocation level details indicative of the ordered trade by the second trading party; and

creating contract notes based upon the matched contract level details and allocation level details.

15. The method of Claim 14 wherein the allocation level details comprise a part of the trade allocation information and further comprising the step of extracting the allocation level details from the trade allocation information.

16. The method of Claim 14 wherein the contract level details comprise a part of the trade execution information and further comprising the step of extracting the contract level details from the trade execution information.

17. The method of Claim 14 further comprising the step of prorating the contract level details based upon the allocation level details.

18. The method of Claim 17 wherein at least a portion of the contract level details are prorated proportionally.

19. The method of Claim 17 wherein at least a portion of the contract level details are prorated on an equal basis.

20. The method of Claim 17 further comprising the step of providing a database of trading party profiles, the database of trading party profiles having stored thereon a trading party profile for the first trading party which comprises an indication of proration

rules, and wherein the contract level details are prorated either proportionally or on an equal basis depending upon the proration rules.

21. The method of Claim 20 further comprising the step of allowing the first trading party to access, modify and confirm the trading party profile.

22. A method for facilitating processing and management of a securities trade comprising the steps of:

receiving trade execution information, the trade execution information indicative of an executed securities trade by a first trading party;

receiving trade allocation information, the trade allocation information indicative of an ordered securities trade by a second trading party;

comparing the trade execution information with the trade allocation information, and determining that a match exists if the trade execution information and the trade allocation information correlate within a set of predefined acceptable trade parameters specified by at least one of the first trading party and the second trading party;

extracting allocation level details from the trade allocation information;

extracting contract level details from the trade execution information if the contract level details comprise a part of the trade execution information, and prorating the contract level details based upon the allocation level details if the contract level details do not comprise a part of the trade execution information;

matching contract level details indicative of the executed trade by the first trading party with allocation level details indicative of the ordered trade by the second trading party; and

creating contract notes based upon the matched contract level details and allocation level details.

23. The method of Claim 22 wherein at least a portion of the contract level details are prorated proportionally.

24. The method of Claim 22 wherein at least a portion of the contract level details are prorated on an equal basis.

25. The method of Claim 22 further comprising the step of providing a database of trading party profiles, the database of trading party profiles having stored thereon a trading party profile for the first trading party which comprises an indication of proration rules, and wherein the contract level details are prorated either proportionally or on an equal basis depending upon the proration rules.

26. The method of Claim 25 further comprising the step of allowing the first trading party to access, modify and confirm the trading party profile.

Evidence Appendix
to Appeal Brief Under 37 CFR §41.37
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No evidence of any kind, including evidence submitted under 37 CFR 1.130, 1.131 or 1.132, has been entered by the Examiner and relied upon by Appellant in the appeal.

Related Proceedings Appendix
to Appeal Brief Under 37 CFR §41.37
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There are no decisions rendered by a court or the Board in any of the Appeals or Interferences identified in Section (ii) of the Appeal Brief.